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VIA ELECTRONIC MAIL

Water Docket
U.S. Environmental Protection Agency
Mail Code: 28221T
Attn: Docket ID No. EPA-R03-OW-2010-0736
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
www.regulations.gov

Mr. Ephraim King
U.S. Environmental Protection Agency
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**Re: *Request for an Extension to File Comments on EPA's Draft
TMDL – Notice of Availability at 75 Fed. Reg. 57,776
(September 22, 2010); Docket ID No. EPA-R03-OW-2010-0736***

Dear Sir or Madam:

On behalf of our client, The Fertilizer Institute (TFI), we submit this request to provide an extension of the comment period for the U.S. Environmental Protection Agency's (EPA's) Draft Chesapeake Bay TMDL (Draft TMDL) document. We request the comment period be extended for at least 120 days following EPA's release of the information used in its watershed modeling and incorporated in the Draft TMDL. This extension is necessary to provide adequate time to review the voluminous records that support the Draft TMDL and also to provide adequate time to review relevant information forming the bases for certain assumptions in the Draft TMDL that have not been made publically available. EPA published the notice of the availability of the Draft TMDL on September 22, 2010 in the *Federal Register*, and requires that public comments be submitted on or before November 8, 2010. 75 Fed. Reg. 57,776 (Sept. 22, 2010).

Statement of Interest

TFI represents the nation's fertilizer industry including producers, importers, retailers, wholesalers as well as companies that provide services to the fertilizer industry. TFI members own and operate facilities in the Chesapeake Bay watershed. Many hold National Pollutant Discharge Elimination System (NPDES) permits for point source or stormwater discharges into

the Chesapeake Bay waters that would be affected by the Total Maximum Daily Loads (TMDLs) proposed by EPA. In addition, TFI members' products (*e.g.*, fertilizers) are applied to the land and the Draft TMDL has the potential to affect their use.

Comments

I. EPA Must Provide the Public with Information Forming the Bases for TMDLs

TFI's ability to provide meaningful comments on EPA's Draft TMDL necessitates access to the information and assumptions EPA used in its modeling calculations that formed the bases for the Draft TMDL and requires adequate time to review and evaluate that information. In particular, EPA must make available for public review the scenario data and scenario results that are the inputs and outputs of the "Scenario Builder" model that provides inputs to the Chesapeake Bay Watershed model. EPA is relying on these inputs to determine the assumptions under which the model predicts that water quality standards will be met. These assumptions are incorporated in the Draft TMDL. *See* Draft TMDL, section 8 and Appendix H. Despite its significance, and unlike the Chesapeake Bay Watershed Model, the Scenario Builder code is not available to the public. In addition, while EPA may have provided the Scenario Builder inputs and outputs to watershed jurisdictions, there is no reference or link to this information in the Draft TMDL. *See* <http://ches.communitymodeling.org/models/CBPhase5/index.php> (noting scenario data and phase 5 scenario results are "coming soon") (accessed October 15, 2010).

Furthermore, EPA's water quality planning, management and implementation regulations mandate that public access and review of this information is provided. Specifically, the regulations for establishing TMDLs require that the "[c]alculations to establish TMDLs shall be subject to public review as defined in the State [Continuing Planning Processes]." 40 C.F.R. § 130.7(c)(1)(ii).

Accordingly, we request that EPA make the scenario data, scenario results, and Scenario Builder code publically available as required by 40 C.F.R. § 130.7(c)(1)(ii) and to extend the comment period 120 days after this information is released to the public to ensure that all the relevant information used to establish TMDLs is publically available and that the public has sufficient time to review and comment on the Draft TMDL.

II. A 45-Day Comment Period is Insufficient to Provide an Adequate Opportunity to Review the Numerous and Complex Draft TMDL Documents

As EPA acknowledges, the "Chesapeake Bay TMDL is the largest, most complex TMDL in the country, covering a 64,000-square-mile area in seven jurisdictions." Draft TMDL, at 2-7. The Draft TMDL includes proposals for two separate sets of load allocations and waste load allocations for three pollutants in 92 water body segments (one set to meet current water quality

standards and one set to meet proposed water quality standards that may or may not be approved by the time the TMDL is issued). In all, the Draft TMDL consists of 552 separate TMDLs. The TMDLs also will affect many individual residences and small livestock operations in the seven jurisdictions. Further, the Draft TMDL includes detailed implementation instructions directed at the watershed jurisdictions. Finally, in addition to the Draft TMDL document, which consists of 370 pages, voluminous appendices and technical analyses and modeling information referenced in the Draft TMDL add to the number of documents and complexity of the information that must be reviewed to provide meaningful comments on the Draft TMDL (22 appendices add another 1,672 pages).

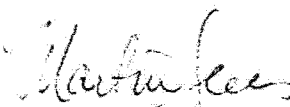
Despite its acknowledgement that the Draft TMDL is the most complex ever attempted, EPA is allowing only 45 days for public comment. TFI believes that 45 days is insufficient under the Administrative Procedure Act to provide for meaningful public comment on the Draft TMDL by any entity, and particularly by the homeowners and small animal feeding operations who may be completely unaware of this effort to regulate them. Accordingly, we request a 120-day comment period extension beginning on the date that EPA makes available for public review the link to the inputs, and outputs as well as the Scenario Builder code for the Scenario Builder model.

Conclusion

We appreciate your consideration of this request for an extension of the comment period for 120 days after EPA makes the scenario data and scenario results publically available. We trust that EPA is interested in receiving thorough comments on this complex issue and ensuring that the public has access to all the relevant information and, as such, will grant our request. Please contact me if you would like to further discuss our comments.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

By: 
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cc: Peter S. Silva